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INFO ARAB ISRAELI COLLECTIVE
ARAB LEAGUE COLLECTIVE

C O N F I D E N T I A L CAIRO 001361

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NSC FOR WATERS

E.O. 12958: DECL: 04/29/2017
TAGS: [PGOV](#) [KISL](#) [PREL](#) [KDEM](#) [PHUM](#) [EG](#)
SUBJECT: COURT RULES AGAINST MILITARY TRIBUNALS FOR MUSLIM
BROTHERHOOD

REF: A. CAIRO 1128

[1](#)B. CAIRO 1276

CLASSIFIED BY: MINISTER-COUNSELOR FOR ECONOMIC AND POLITICAL AFFAIRS
WILLIAM R. STEWART, FOR REASONS 1.5 (B) AND (D).

[1](#)1. (SBU) SUMMARY: ON MAY 8, EGYPT'S SUPREME ADMINISTRATIVE COURT OVERTURNED THE FEBRUARY PRESIDENTIAL DECREE THAT ORDERED 40 MUSLIM BROTHERHOOD MEMBERS TO STAND BEFORE A MILITARY TRIBUNAL, AND RULED THAT THE MB DEFENDANTS BE RELEASED IMMEDIATELY. THE WIDESPREAD EXPECTATION AMONG OUR JUDICIAL CONTACTS IS THAT THE GOVERNMENT WILL RAPIDLY APPEAL AND OVERTURN THE MAY 8 RULING, AND THAT THE MILITARY TRIBUNALS WILL PROCEED. THE MB DEFENDANTS CURRENTLY REMAIN IN DETENTION. ALSO ON MAY 8, A PEOPLE'S ASSEMBLY COMMITTEE DOMINATED BY THE RULING PARTY VOTED TO SUSPEND THE PARLIAMENTARY IMMUNITY OF THE TWO MB MP'S WHO WERE ARRESTED AND RELEASED LAST WEEK, SPARKING SPECULATION THAT THE TWO WILL SOON BE RE-ARRESTED. MEANWHILE, THE GOE'S CAMPAIGN OF DETENTIONS OF MB MEMBERS CONTINUES, WITH 21 ARRESTED IN THE PAST TWO WEEKS. END SUMMARY.

COURT RULES IN MB'S FAVOR; GOVERNMENT APPEAL EXPECTED

[1](#)2. (SBU) AS REPORTED REF A, SINCE PRESIDENT MUBARAK'S FEBRUARY 6 DECREE THAT THE CASES OF 40 MB MEMBERS (INCLUDING SECOND DEPUTY SUPREME GUIDE KHAIRAT AL-SHATIR, THE MB'S THIRD-MOST SENIOR OFFICIAL) BE TRANSFERRED TO A MILITARY TRIBUNAL, THE MB HAS FILED SEVERAL LAWSUITS DISPUTING THE LEGALITY OF THE PRESIDENTIAL ORDER. (NOTE: THE MILITARY TRIBUNALS BEGAN ON APRIL 26, BUT WERE IMMEDIATELY ADJOURNED UNTIL JUNE 3. THE CHARGES INCLUDE MONEY LAUNDERING AND PLANNING TERRORIST ACTIONS IN SUPPORT OF THE MB. END NOTE). THE UNUSUAL MAY 8 DECISION OF EGYPT'S SUPREME ADMINISTRATIVE COURT OF FIRST INSTANCE TO OVERTURN THE FEBRUARY 6 PRESIDENTIAL DECREE WAS IN RESPONSE TO ONE SUCH AN MB LEGAL APPEAL. THE COURT REPORTEDLY RULED THAT THE PRESIDENTIAL DECREE SHOULD BE CANCELED, AND THAT THE DETAINEES BE IMMEDIATELY RELEASED AND COMPENSATED FOR THEIR TIME IN DETENTION. AS OF COB MAY 9, THE DETAINEES REPORTEDLY WERE STILL IN DETENTION, AND THERE IS LITTLE EXPECTATION THAT THEY WILL BE RELEASED BEFORE THE GOVERNMENT FILES AN APPEAL OF THE MAY 8 RULING. (NOTE: 33 OF THE 40 DEFENDANTS ARE IN CUSTODY, WHILE THE OTHER SEVEN ARE BEING TRIED IN ABSTENTIA. END NOTE).

[1](#)3. (C) ACCORDING TO OUR JUDICIAL CONTACTS, THERE IS AN APPEALS PROCESS FOR DECISIONS OF THE SUPREME ADMINISTRATIVE COURT OF FIRST INSTANCE - EITHER THE COURT OF SECOND INSTANCE OR THE STATE COUNCIL CAN OVERTURN THE COURTS RULINGS. THE EXPECTATION AMONG THE EMBASSYS CONTACTS IS THAT THE

GOVERNMENT WILL APPEAL THE MAY 8 RULING TO THE STATE COUNCIL (STAFFED BY STAUNCH PRESIDENTIAL ALLIES), WHICH WILL OVERTURN THE DECISION, AND THE MB DETAINEES WILL ULTIMATELY FACE A MILITARY TRIBUNAL. ONE LEGAL SCHOLAR CITED TO US A SIMILAR 1995 CASE, WHEN THE SUPREME ADMINISTRATIVE COURT RULED THAT THE PRESIDENT'S REFERRING MEMBERS OF THE JAMA'A ISLAMIYYA GROUP TO A MILITARY COURT WAS UNCONSTITUTIONAL. THE RULING WAS SUBSEQUENTLY OVERTURNED BY THE SUPREME CONSTITUTIONAL COURT, AND THE MILITARY TRIBUNALS WENT FORWARD.

IMMUNITY OF MB PARLIAMENTARIANS
REPORTEDLY LIFTED

14. (SBU) AS REPORTED REF B, IN AN ESCALATION OF THE GOES CAMPAIGN AGAINST THE MB, SECURITY OFFICIALS ARRESTED TWO MB PARLIAMENTARIANS ON APRIL 29. THE TWO, SABRY AMER AND RAGAB ABU ZAID (BOTH FROM MENOUEFIYAH), WERE RELEASED A DAY LATER. HOWEVER, IN A LATE-NIGHT MAY 8 SESSION, THE LEGISLATIVE AND CONSTITUTIONAL AFFAIRS COMMITTEE OF THE PEOPLE'S ASSEMBLY (DOMINATED BY RULING PARTY MP'S), IN RESPONSE TO A REQUEST BY THE MINISTER OF JUSTICE, REPORTEDLY VOTED TO LIFT THE TWO MP'S PARLIAMENTARY IMMUNITY SO THAT THEY CAN BE INTERROGATED. THE TWO MP'S HAVE APPARENTLY NOT YET BEEN RE-ARRESTED. THE MB'S PARLIAMENTARY BLOC PLANS TO HOLD A LATE AFTERNOON PRESS CONFERENCE ON MAY 9 TO PROTEST THE LIFTING OF THE MPS' IMMUNITY.

ARRESTS CONTINUE, BLOGGER'S
DETENTION RENEWED

15. (SBU) MEANWHILE, THE GOVERNMENT CONTINUES TO DETAIN MB MEMBERS, WITH AT LEAST 21 ARRESTED IN THE LAST TWO WEEKS (NOTE: AT LEAST 300 MEMBERS OF THE BANNED ISLAMIST ORGANIZATION HAVE BEEN DETAINED SINCE DECEMBER 2006. END NOTE). ON MAY 8, THE STATE SECURITY PROSECUTOR EXTENDED THE DETENTION OF PROMINENT MB BLOGGER AND CORRESPONDENT FOR THE CAIRO-BASED AL HEWAR SATELLITE CHANNEL, ABDUL MONEIM MAHMOUD, FOR ANOTHER 15 DAYS (REF A REPORTS ON HIS INITIAL APRIL 15 DETENTION). ON MAY 7, MAHMOUD AND 23 DETAINED STUDENTS REPORTEDLY BEGAN A HUNGER STRIKE TO PROTEST THE "INHUMANE CONDITIONS" OF THEIR DETENTION (INCLUDING ALLEGATIONS OF "PSYCHOLOGICAL TORTURE" BY ALLOWING CRIMINAL PRISONERS TO "SEXUALLY HARASS" THEM), AND DEMANDED THE DROPPING OF ALL "FABRICATED CHARGES" AGAINST THEM, AND THEIR IMMEDIATE RELEASE. AMNESTY INTERNATIONAL AND OTHER HUMAN RIGHTS GROUPS HAVE CALLED FOR MAHMOUD'S RELEASE.

COMMENT

16. (C) THE UNUSUAL MAY 8 COURT DECISION OVERTURNING THE PRESIDENTIAL DECREE IS A RARE INSTANCE OF PUSHBACK AGAINST PRESIDENTIAL AUTHORITY, BUT WILL LIKELY BE SIMPLY A BUMP IN THE ROAD OF THE GOE'S CAMPAIGN AGAINST THE MB. THE GOVERNMENT APPEARS DETERMINED TO CRACK DOWN ON THE ISLAMIST GROUP, AND HAS THE LEGAL AVENUES AT ITS DISPOSAL TO OVERTURN THE SUPREME ADMINISTRATIVE COURT'S RULING AND SEND THE 40 MB DEFENDANTS BACK TO A MILITARY TRIAL. TWO CIVILIAN COURTS HAD PREVIOUSLY SEPARATELY ACQUITTED THE 40 MB DEFENDANTS (REPORTEDLY ON THE BASIS OF A LACK OF EVIDENCE TO SUPPORT THE GOVERNMENT'S CHARGES), BUT MUBARAK EASILY OVERCAME THOSE DECISIONS BY EXERCISING HIS PRESIDENTIAL PREROGATIVE TO TRANSFER THE CASES TO A MILITARY TRIAL. THESE INCIDENTS REFLECT AN APPARENT GAP BETWEEN THE JUDICIAL AND EXECUTIVE BRANCHES, PARTICULARLY WHEN IT COMES TO THE MB, AND ARE STARK REMINDERS OF THE EXTENT OF PRESIDENTIAL POWERS IN EGYPT. RICCIARDONE